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INFORMATION FROM NON-SELF-GOVERNING TERRITORIES TRANSMITTED UNDER ARTICLE 73 e OF THE CHARTER OF THE UNITED NATIONS

QUESTION OF EAST TIMOR

Note verbale dated 28 June 1996 from the Chargé d'affaires a.i. of the Permanent Mission of Portugal to the United Nations addressed to the Secretary-General

1. The Chargé d'affaires a.i. of the Permanent Mission of Portugal to the United Nations has the honour to call the attention of the Secretary-General to the information provided by the Mission in its note verbale of 5 June 1995 (A/50/214 and Corr.1), as required by Article 73 e of the Charter of the United Nations, the terms of which remain valid.

As in previous years, since the Government of Portugal continues to be prevented de facto from exercising its responsibilities for the administration of the Non-Self-Governing Territory of East Timor, owing to the latter's illegal occupation by a third country thus preventing its people from exercising freely their right to self-determination, it remains unable to provide the information concerning that Territory required by Article 73 e of the Charter. Nevertheless, the Government of Portugal would like to draw attention to the following.

Reports coming from different sources converge in denouncing that the situation in East Timor continues to be very serious, justifying the gravest concerns.

2. Since 5 June 1995, when our last information was provided and in the first months of 1996, it is generally reported that ethnic and religious tensions

* A/51/50.

between East Timorese and Indonesians (fostered by the latter's immigration into the Territory), a pattern of short and arbitrary detentions of young people accompanied by beatings and torture, "disappearances", summary executions and a difficult social and economic situation with high unemployment rates, have contributed to a general climate of fear, distrust and intimidation. The Indonesian authorities have persisted in resorting to repressive actions intended to subdue the opponents to integration.

3. Numerous young East Timorese have been brought to trial and sentenced to prison terms, charged with organizing and participating in peaceful demonstrations in East Timor and Jakarta against Indonesian's illegal occupation of their country. None of those previously convicted for non-violent activities has been released and no significant improvement has been reported regarding the treatment and full respect of the rights of those in custody. The Special Rapporteur on Torture of the Commission on Human Rights in 1995 transmitted to the Government of Indonesia information on 20 cases of torture, most of which occurred during detention. The United States State Department report states that the use of torture has continued or worsened in detention facilities run by military intelligence.

4. In an unprecedented development, about 1,000 East Timorese who were visiting Australia in early 1995 with tourist visas applied to the Australian authorities for the granting of political asylum. In May of the same year, 18 people escaped from Dili by boat (a small and dilapidated wooden fishing vessel) and headed for the northern Australian coast with the same purpose. They were the first "boat people" ever to escape from East Timor - a clear symptom of the state of exasperation reached over the conditions prevailing in the Territory. On 20 November, a second group of 27 people attempted to sail from Dili to Australia but were captured by Indonesian security forces. They were subjected to interrogation at Dili police station and allegedly also to ill-treatment, including torture.

5. In 1995, according to practically all testimonies available, instead of reducing its troop level in East Timor, Indonesia increased their number significantly. According to the military commander, about 5,000 soldiers and 4,500 policemen were posted in East Timor but other sources estimate that the real figure was between 13,000 and 15,000 armed forces. This increasing presence of military forces has strongly contributed to the tension prevailing in East Timor. In fact, many human rights violations seem also to be due to the unprofessional behaviour shown by troops in East Timor. In his recent report to the Commission on Human Rights (E/CN.4/1996/4), the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions states that he remains deeply concerned about the ongoing unrest and the violence and urges the Government of Indonesia to make sure that the force used in response to demonstrations, even those which are violent, will be in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

6. In September 1995, widely reported religious incidents occurred in East Timor and charges were made that they had been provoked or exploited by the Indonesian military and security apparatus. Those incidents stemmed from an insulting remark made about the Catholic religion by an Indonesian official in Maliana, some 120 kilometres west of Dili. This prompted disturbances to break

out across the country: in Viqueque, Liquiça and Maubesse. The Comoro market in Dili was attacked and burned by demonstrators, as well as mosques, stalls, cars and other private property. As the result of the violence, some hundreds of immigrants have reportedly fled from East Timor. According to the Special Rapporteur on Torture, between 50 and 100 persons were reportedly arrested and 8 injured. The riot was considered the worst in the Territory since the killings of November 1991 at the cemetery of Santa Cruz. Additional Indonesian troops and police mobile brigades from West Timor, Java and Bali were sent into East Timor, thus contradicting previous announcements concerning an imminent reduction of occupying military personnel.

7. On 10 October, two people died as a result of confrontations that occurred in Dili. According to reliable sources, there was again a deep suspicion that the Indonesian armed forces had been behind the troubles, through the use of agents provocateurs seeking to provide a good opportunity for a crackdown and to further justify a strong military presence in the Territory. The October riots lasted for four days, were confined to Dili and involved hundreds of youths but only minor destruction of property. The protest was crushed by the armed forces in a major sweep that included round-ups and house-to-house searches at night and lead to the detention of 150 people during the four days of unrest in the capital. Indonesian military even broke into the school of the Canossian sisters and arrested about 50 youths who had taken refuge there.

8. The Vice-President of the Indonesian National Commission for Human Rights, Mr. Maruski Darusman, himself, went as far as to state publicly that the high tension and the incidents in East Timor were the result of 20 years of frustration and political oppression and that they could not be attributed to religious or ethnic causes alone. Clementino dos Reis Amaral, a member of the Commission and a native of East Timor, also said (see The Australian, 7 December 1995) that 20 years after the Indonesian takeover, an atmosphere of fear continued to prevail in East Timor. "The human rights situation has never been as bad as now, it is even far worse", he stated.

9. According to Amnesty International (ASA 21 March 1996; distr: SC/CC/CO), at least 300 people were arrested for their alleged involvement in the October riots. Amnesty International is concerned that many of those detained were subject to intimidation, threats, ill-treatment, beatings and torture and did not have full access to their families and lawyers of their choice, and that the arrests that took place were arbitrary in that security forces arrested individuals known to be political activists not necessarily connected with the riots.

10. Since 25 September 1995, when five youths sought political asylum in the British Embassy in Jakarta, till May 1996, more than 80 young East Timorese took refuge in a number of Western embassies in Jakarta in a bid to leave the country. They claimed they feared for their lives from the Indonesian security forces.

Even though the Indonesian authorities have dismissed those claims, maintaining that the youths had not been persecuted but were just trying to embarrass Indonesia and to get a free ride to Portugal, prominent East Timorese have clearly related this problem to the military crackdown on the Territory

being carried out since September. Armindo Maia, Vice-Rector at the East Timor University, told Reuters that:

> "The situation here in East Timor is one of terror, tension and persecution ... I am not surprised these youngsters choose to go to foreign embassies, as people in their position are generally in a hopeless situation".

Monsignor Carlos Ximenes Belo, head of the Catholic Church in East Timor, called on the Government of Indonesia to examine the causes behind the recent asylum-seeking bids.

In fact, from September 1995 to June 1996, it appears that the wave of young East Timorese leaving Indonesia for political asylum abroad was caused by a combination of terror and despair with the political opportunity offered by the fourth anniversary of the Santa Cruz massacre on 12 November and the twentieth anniversary of the Indonesian invasion of East Timor on 7 December to call the world's attention to their plight once again.

11. Giving real signs that the situation in East Timor has not improved, in April 1996 several news agencies reported two killings in East Timor in two separate incidents. One of the deaths occurred in Dili after the victim had allegedly tried to hoist the flag (which was at half mast in sign of mourning for President Suharto's wife). He was caught by two security agents, beaten and finally shot dead. The victim was identified as André Sousa, a middle-aged former public servant. Another death took place in Baucau, where Paulo dos Reis, an East Timorese youth, was shot dead, apparently because he was suspected of being involved with the East Timorese resistance.

On 29 April, a demonstration against the killing of Paulo dos Reis in Wailili, near Baucau, where people had gathered to celebrate the visit of a Salesian representative, also resulted in violent confrontation.

Incidents involving hundreds of young people have recently broken out in Baucau, the second city of East Timor. According to reliable sources, the rioting has been prompted by profanation (allegedly committed by Indonesian security elements) of a pious image at the Catholic Church of Baucau. The clashes started on 9 June, reportedly resulting in the death of two people and wounding an undetermined number of others (one of them was identified as Martinho Lopes). The situation in Baucau remained tense for several days while detentions and house-to-house searches were in progress throughout the city, with people missing or being submitted to harsh interrogation methods.

12. The International Court of Justice on 30 June 1995 delivered its judgment in the case concerning East Timor (Portugal vs. Australia), instituted on 22 February 1991. The Court concluded that it would not in this case exercise its jurisdiction because Indonesia, not accepting the mandatory jurisdiction of the Court, had been absent from the proceedings. Since the Court had decided that the rule on the merit of the case would necessarily imply to rule on the lawfulness of Indonesian's conduct regarding East Timor, the latter's absence led to the Court's declining to exercise its jurisdiction.

The Court's decision was taken on purely procedural grounds for the reason referred to above. There was no judgment on Portugal's claims and therefore no conclusion as to the legality of Australia's action in negotiating, concluding and implementing the so-called "Timor Gap Agreement" with Indonesia.

The International Court of Justice did not fail to recognize that Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an erga omnes character that is irreproachable. The Court also recognized that the General Assembly, which reserves to itself the right to determine the Territories that have to be referred to as Non-Self-Governing for the purposes of the application of Chapter XI of the Charter, has treated East Timor as such a Territory. The competent subsidiary organs of the General Assembly have continued to treat East Timor as such to this day. Furthermore, the Security Council, in its resolutions 384 (1975) and 389 (1976) has expressly called for respect for the territorial integrity of East Timor as well as the inalienable right of its people to self-determination in accordance with General Assembly resolution 1514 (XV).

Even though the Court did not wish to rule on Indonesian's conduct towards East Timor, it mentioned the intervention of the armed forces of Indonesia in the Territory and said also that on 7 December 1975 the armed forces of Indonesia had intervened in East Timor, expressions that imply the qualification of such a conduct as being against international law.

In reaction to this judgment, the Government of Portugal challenged the Government of Indonesia to accept the jurisdiction of the International Court of Justice and to abide by its ruling over the case. This challenge has failed, however, to receive a positive response.

The Court's decision over this procedural point, which prevented a judgment over the substance from being delivered, does not impair the legal and political grounds over which Portugal's action to complete the decolonization of East Timor in conformity with international law and to uphold the rights of the East Timorese have been carried out, the latter's right to self-determination and the Territory's non-self-governing status having been clearly recognized by the Court.

13. Upon the invitation of the Government of Indonesia, the United Nations High Commissioner for Human Rights paid a visit to Indonesia and East Timor. The visit took place from 3 to 7 December 1995. According to Mr. Ayala Lasso's report (E/CN.4/1996/12), the situation in East Timor could and should improve: such an improvement must be an end in itself. At the same time, it could influence the political dialogue in a positive manner. In this connection, the visit of the High Commissioner could represent a significant positive step in terms of the cooperation between the Government of Indonesia and the United Nations on human rights matters.

14. It is worth recalling when referring to the situation prevailing in the Territory as a whole that the 1996 World Population Report released by the United Nations Population Fund (UNFPA) shows that East Timor has the worst infant mortality rate among the world's 30 least developed countries and

Territories, at 135 deaths per 1,000 births. East Timor also has the lowest life expectancy among those same countries listed in the 1996 Report (48.4 years for women and 46.7 for men).

15. On 8 July 1995 and 16 January 1996, respectively, the sixth and seventh rounds of talks were held between the Ministers of Foreign Affairs on the question of East Timor presided over by the Secretary-General. An eighth round of talks took place on 27 June 1996. Since the positions of the Government of Portugal and Indonesia over the status of the Territory have continued to be far apart, efforts in this context have been concentrated on defining and carrying out a number of measures aimed at fostering an atmosphere of dialogue, at improving the situation in the Territory and trying, through a step-by-step approach, to bridge the existing differences whenever possible. The two parties have agreed to start discussions on substantive issues regarding possible avenues towards achieving a just, comprehensive and internationally acceptable solution to the question of East Timor.

Those substantive issues which have been identified are related to an eventual framework for the achievement of a solution to the question of East Timor as well as other related issues, inter alia, the preservation and promotion of the cultural identity of the East Timorese people and bilateral relations between Indonesia and Portugal.

16. The involvement of the East Timorese in this process is crucial: the experience of these 20 years of illegal occupation and repression shows that a solution cannot be found and cannot be long-lasting without East Timorese acceptance. Some progress was made recently in this field: as agreed during the intergovernmental talks, the first and the second All-Inclusive Intra-East Timorese meetings took place in Burg Schlaining, Austria, from 2 to 5 June 1995 and from 19 to 22 March 1996, respectively, with the assistance of United Nations officials. Thirty East Timorese, from exile and from within the Territory, representing different political movements and tendencies showed that, political differences notwithstanding, they could find common platforms regarding crucial areas of concern for their people, such as the preservation of the East Timorese identity, the human rights situation, the promotion of peace and their willingness to participate effectively in running the Territory's affairs.

Portugal supports the holding of these rounds of All-Inclusive Intra-East Timorese talks, organized and facilitated by the United Nations, which laid the ground for further cooperation between the different East Timorese factions and contributed further to the Secretary-General's ongoing efforts. United Nations involvement in these talks has ensured their credibility and independence, as well as enlarged and representative participation by the different East Timorese political currents.

The fact that participants were not only able to establish a dialogue, in spite of their political divergences, but could also agree on a platform of common concerns on several issues regarding the situation in the Territory and its future cannot but be valued by Portugal as a positive outcome. These meetings are indispensable to achieving the involvement of the East Timorese in

the negotiating process in the search for a solution to the question of East Timor.

The first meeting took place in a very positive and constructive atmosphere, allowing for a Burg Schlaining Declaration to be issued, together with two annexes: one referring to the whole range of the issues discussed (such as the redressing of the human rights situation and the promotion of peace, the preservation of the East Timorese identity and the need for the involvement of the East Timorese in running their own country in a climate of mutual understanding, tolerance and harmony); and the other, reproducing the statement made by Monsignor Ximenes Belo on behalf of the Catholic Church in East Timor.

In the second All-Inclusive Intra-East Timorese meeting, the participants agreed on a statement that included an expression of concern at the current human rights situation and in particular the plight of East Timorese women; a request for setting up an East Timorese cultural centre in Dili, and a request to Portugal to help East Timor's human resource development by concrete measures, such as financial and technical support for East Timor University, and practical training for youth in all areas of relevance to the needs of the East Timorese people.

17. Following the seventh rounds of talks, the Prime Minister of Portugal took the initiative to meet President Suharto of Indonesia, in Bangkok during the Asia-Europe Meeting on 29 February. He put forward to him a proposal relating to the question of East Timor. Portugal would agree to the opening, in both Lisbon and Jakarta, of interest sections, provided that the Indonesia side would agree to the release of the East Timorese leader, Xanana Gusmão, and his followers and give the assurance of full respect of human rights in East Timor under effective monitoring by the United Nations.

President Suharto took note of this proposal, which will be formally discussed within the framework of the ongoing dialogue between Portugal and Indonesia under the auspices of the United Nations.

18. Notwithstanding some progress made in establishing a national Human Rights Commission, Indonesia has, unfortunately, not complied with most of the commitments undertaken before the Commission on Human Rights since 1992 and during the rounds of talks over the question of East Timor held under the auspices of the Secretary-General of the United Nations.

The Government of Indonesia has been called upon by the United Nations Commission on Human Rights to facilitate access to East Timor by human rights and humanitarian organizations and international media. While recognizing that some progress has been made in this matter, it is regarded as being clearly insufficient. International and credible human rights organizations such as Amnesty International or Human Rights Watch/Asia have still not been able to visit East Timor. Human rights situations in East Timor during this period remained without effective monitoring. Amnesty International is concerned that attempts by the Indonesian authorities to restrict access by independent human rights monitors and journalists to East Timor exacerbates the risks for the East Timorese still in detention (ASA 21 March 1996).

19. On 23 April 1996, the Commission on Human Rights adopted by consensus a Chairman's statement on the situation of human rights in East Timor, following those approved in 1992, 1994 and 1995.

In considering this issue, the Commission on Human Rights had before it the Secretary-General's report pursuant to the statement adopted in the previous session (E/CN.4/1996/118), the report of the High Commissioner for Human Rights (E/CN.4/1996/112), the report of the Special Rapporteur on Torture (E/CN.4/1996/35), the report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (E/CN.4/1996/4) and information regarding the action taken by working groups of the Commission concerning East Timor (E/CN.4/1996/38 and E/CN.4/1996/40).

The Commission expressed its deep concern over the reports of violations of human rights in East Timor, recalled the undertakings by the Government of Indonesia to promote human rights in East Timor and stressed the need to take further steps towards their implementation, including the early release of the East Timorese detained or convicted and the further clarification on the circumstances surrounding the Dili incident of 1991.

The Commission welcomed the visit to East Timor of the High Commissioner for Human Rights, Mr. José Ayala Lasso, on 6 December 1995, and stressed the importance of that visit in the context of the 1995 Chairman's statement. The Commission noted with satisfaction the understanding reached between the Indonesia authorities and the High Commissioner concerning the upgrading of the current memorandum of intent on technical cooperation in the field of human rights, signed in Jakarta on 26 October 1994, into a memorandum of understanding. In that context, it was also provisionally agreed to look into the possibility of the High Commissioner assigning a programme officer within the office of the United Nations Development Programme (UNDP) in Jakarta in order to follow up the implementation of the technical cooperation agreement. This officer would also have regular access to East Timor. Concrete developments in this regard are still to be expected.

The Commission welcomed the intention of the Government of Indonesia to continue to cooperate with the Commission on Human Rights and its mechanisms as well as its intention to invite a thematic rapporteur in 1997. But it should nevertheless be recalled that Indonesia did not accept the visit of a thematic rapporteur in 1996 and has responded negatively to the requests to visit East Timor made by the Special Rapporteur on Torture and by the Working Group on Arbitrary Detentions, thus not complying with the provisions of paragraph 7 of the Chairman's statement on the situation of human rights in East Timor adopted on 1 March 1995. The Government of Indonesia was called upon by the Commission on Human Rights to facilitate access to East Timor by human rights and humanitarian organizations and international media. While recognizing that some progress has been made in this matter, this progress is clearly insufficient.

20. Against this regrettable background, the European Union (EU), based on the principles of respect for human rights and for the right to self-determination of peoples that are at its very foundation, acted in order to promote a solution to the question. The European Council of Madrid, on 16 December 1995, bearing in mind in particular, the latest events in Jakarta in connection with the

increased tension in East Timor, pledged support for any appropriate action that could contribute towards a just, overall and internationally acceptable solution to this issue and in particular towards the mediation efforts being made by the United Nations Secretary-General.

As in previous years, during the last session of the Commission on Human Rights, EU, under agenda item 10, Country situations, made a statement expressing its serious concern over the grave situation of human rights in East Timor. Some months before, at the United Nations General Assembly, EU had also included a reference to East Timor in its memorandum circulated with the speech delivered at the fiftieth session by Mr. Javier Solana on behalf of the Union.

A common position of the 15 States members of EU, concerning East Timor, defined by the Council on the basis of article J.2 of the Treaty on European Union, was formally adopted on 25 June 1996. In that context, the Union, referring to its previous declarations on the situation in East Timor, intends to pursue the following aims:

(a) To contribute to the achievement by dialogue of a fair, comprehensive and internationally acceptable solution to the question of East Timor, which fully respects the interests and legitimate aspirations of the Timorese people, in accordance with international law;

(b) To improve the situation in East Timor regarding respect for human rights in the Territory.

In order to pursue the aims referred above, the Union:

(a) Supports the initiatives undertaken in the United Nations framework that may contribute to resolving this question;

(b) Supports in particular the current talks under the aegis of the United Nations Secretary-General with the aim of achieving a fair, comprehensive and internationally acceptable solution to the question of East Timor, effective progress towards which continues to be hampered by serious obstacles;

(c) Encourages the continuation of intra-Timorese meetings in the context of this process of dialogue under the auspices of the United Nations;

(d) Calls upon the Government of Indonesia to adopt effective measures leading to a significant improvement in the human rights situation in East Timor, in particular by implementing fully the relevant decisions in this connection by the United Nations Commission on Human Rights;

(e) Supports all appropriate action with the objective of generally strengthening respect for human rights in East Timor and substantially improving the situation of its people, by means of the resources available to the Union and aid for action by non-governmental organizations.

21. At the Special Committee on the Situation to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in July 1995, Sao Tome and Principe, on behalf of Angola, Cape Verde, Guinea-Bissau

and Mozambique, stressed the importance of the all-inclusive intra-East Timorese dialogue and encouraged the negotiations between Portugal and Indonesia under the auspices of the Secretary-General.

In San Carlos de Bariloche, in Argentina, on 16 and 17 October 1995, during the fifth summit of the Ibero-American countries, the Heads of State and Government, as in previous years, expressed their support for the efforts of the United Nations Secretary-General in order to contribute to a just, comprehensive and internationally acceptable solution to the East Timor question, in accordance with international law.

22. The Chargé d'affaires a.i. of Portugal to the United Nations has the honour to request that the present note verbale be circulated as an official document of the General Assembly under items 88 and 93 of the preliminary list.